a

CHAN KOW CHUAN

v.

ANDREW KOK KENG SIONG & ANOR

b

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL HAMID SAID J
[CIVIL SUIT NO: S2-23-82-2001]
19 AUGUST 2002

c ***CIVIL PROCEDURE:*** *Pleadings - Amended statement of claim - Alleged defamatory words reproduced in English without certified translation - Whether prejudicial to defence*

TORT: *Defamation - Libel - Plaintiff not personally seeing or knowing contents of letter complained of - Whether fatal to plaintiff's case*

d This was the second defendant's application under O. 18 r. 19(1)(a) of the Rules of The High Court 1980 to strike out the plaintiff's claim against him. The plaintiff contended that the 1st defendant had expressed defamatory words in a letter against the plaintiff. The alleged words, not the exact words, were reproduced in the amended statement of claim in the English language, without
e a certified translation.

Held:

[1] If the words were not in the Malaysian official language or in English, then a certified translation would have been needed. The use of the English
f language or the lack of a certified translation did not prejudice the 2nd defendant's defence. (p 316 c-e)

[2] The plaintiff had never seen the letter. Further, the plaintiff heard of the contents of the letter from somebody else. On these grounds and based on
g the scrutiny of the amended statement of claim, the plaintiff had evidently failed to launch the case with sufficient clarity. (p 318 a-d)

[Ordered accordingly.]

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Case(s) referred to:
Collins v. Jones [1955] 2 All ER 145 ***(foll)***
Harris v. Warre [1879] 4 CPD ***(refd)***
Hassan & Anor v. Wan Ishak & Ors [1996] 2 MLJ 45 ***(refd)***
Karpal Singh Ram Singh v. DP Vijandran [2001] 3 CLJ 871 CA ***(refd)***
Morgan v. Odhams Press Ltd & Anor [1971] 2 All ER 1156 ***(foll)***
Pacific Centre Sdn Bhd v. United Engineers (M) Bhd [1984] 2 CLJ 56; [1984] 2 CLJ (Rep) 319 HC ***(refd)***
Zakaria Mohamed Esa v. Dato' Ahmad Aziz Ahmad & Ors [1995] 2 MLJ 222 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 18 r. 19(1)(a), O. 78 r. 2, O. 92 r. 4

Other source(s) referred to:
Atkins Encyclopaedia of Court Forms in Civil Proceedings, vol 25, 1998 Issue, p 67
Civil Proceeding, vol 25, 1998 Issue, p 67

For the plaintiff - M/s Lopez & Woon-Choon
For the defendant - M/s Shafee & Co

Reported by Raja Vishnu Sivarajah

JUDGMENT

Abdul Hamid Said J:
The second defendant (D2) made an application under O. 18 r. 19(1)(a) RHC 1980 to strike out the plaintiffs claim against him. As the application is under r. 19(1)(a) no evidence is admissable – *Zakaria bin Mohamed Esa v. Dato' Ahmad Aziz bin Ahmad & Ors.* [1995] 2 MLJ 222.

Besides the said order, the D2 also prayed that the court should invoke its inherent jurisdiction under O. 92 r. 4 RHC 1980. The position in Malaysia of the scope of r. 4 is clearly stated in the case of *Pacific Centre Sdn. Bhd. v. United Engineers (M) Bhd.* [1984] 2 CLJ 56 at p. 59; [1984] 2 CLJ (Rep) 319 at p. 324 "... it is clear that the inherent jurisdiction of the court includes all the powers that are necessary to fulfil itself as a Court of Law; to uphold, to protect, and to fulfil the judicial function of administering justice according to law in a regular, orderly and regular manner".

The plaintiffs and the defendants are members of The Institute of Company Secretaries Malaysia (ICSM), the Association of the Institute of Chartered Secretaries and Administrators (MAICSA). The plaintiff was the ex-President of the Institute of Chartered Secretaries and Administrators (ICSA).

At the congregation of members of ICSA in Singapore, the 1st defendant was said to have uttered derogatory remarks of the plaintiff. This contends the plaintiff is defamatory. This allegation has nothing to do with D2.

At a Council Meeting of the MAICSA, in Kuala Lumpur, the first defendant is alleged to have uttered words that the plaintiff alleged is defamatory. The said words were reproduced in para. 4 of the amended statement of claim. The words, not the exact words, were reproduced in English without the certified translation. In *Karpal Singh Ram Singh v. DP Vijandran* [2001] 3 CLJ 871, the Court of Appeal held, following the decision in *Hassan & Anor. v. Wan Ishak & Ors* [1996] 2 MLJ 45 decided that "... the statement must be set out in the original language in the statement of claim".

I am of the view that if the words spoken of were not in the Malaysian official language or in English ie, the language understood by all judges in the High Courts in Malaya, then a certified translation would be needed. The translation would also help the defendant to prepare his case.

In the case before me the alleged statement is in English. All the parties understand it. So do the defendants. At this juncture I refrain myself from commenting on whether the words that were uttered must be the exact words.

I do not think that the use of the English language or the lack of certified translation has prejudiced D2's defence.

D2's application to strike out para. 4 of the amended statement of claim is dismissed.

Order 78 of the RHC 1980 applied to actions for libel or slander. Rule 2 says that:

> Before a writ in an action for libel is issued it must be indorsed with a statement giving sufficient particulars of the publications in respect of which the action is brought to enable them to be identified.

Atkins Encyclopaedia of Court Forms in Civil Proceedings, vol. 25, 1998 Issue at p. 67 says that "... in a civil action for defamation, to prove publication by the defendant to a third person, ... the plaintiff should, whenever possible, identify the person or persons to whom the words were published ...".

The crux of the claim is found at para. 4 of the amended statement of claim. Let me note here the alleged defamatory statement by the first defendant did not involve D2. There it is stated what the first defendant said:

> I have a letter here addressed to the President of ICSM and I want this to be minuted in the Minutes of ICSM. This letter is for the President but if he wants to circulate it, it is up to him ... (The President is D2).

In para. 5 of the amended statement of claim, it is stated:

> Surat yang dirujuk oleh Defendan Pertama telah diberikan olehnya kepada Defendan Kedua yang telah mengedarkannya kepada ahli majlis yang hadir di mesyuarat tersebut ... .

In para. 11 of the plaintiffs affidavit-in-reply, the plaintiff affirmed:

> 11. Semasa mesyuarat tersebut, Defendan Pertama telah membantah pencalonan saya dan memberikan kepada Defendan Kedua (D2) sepucuk surat berkenaan bantahan tersebut untuk diedarkan oleh Defendan Kedua kepada ahli-ahli majlis lain yang hadir di mesyuarat.

And in para. 12 of the same affidavit, the plaintiff affirmed "Namun begitu, saya telah diberitahu oleh keluarga seorang ahli majlis ICSM tentang kewujudan surat tersebut ..."

In *Collins v. Jones* [1955] 2 All ER 145 the question before the court, p. 146, was "... whether a plaintiff is to be permitted to bring a libel action on speculation, knowing so little of what is in the letters of which he complains."

"In libel and slander the very words complained of are the facts on which the action is grounded" quoting *Harris v. Warre* [1879] 4 CPD.

Lord Denning, LJ as he then was, said:

> Assuming that these letters did contain some statements defamatory of the plaintiff, that is not sufficient to ground a libel action. She must show what the actual words were. A plaintiff is not entitled to bring a libel action on a letter which he has never seen and of whose contents he is unaware. He must in his pleading set out the words with reasonable certainty: and to do this he must have the letter before him, or at least have sufficient material from which to state the actual words in it. A suspicion that it is defamatory is not sufficient.
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> ... . The Court will require him to give particulars so as to ensure that he has a proper case to put before the Court and is not merely fishing for one. If he cannot give the particulars, he will not be allowed to go on with the charge ... .
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> ... and she can prove her case by subpoenaing the holder of the letter to produce it ... but before she can do this, she must first be able to launch a case with sufficient certainty ...

In this case the plaintiff heard that there is such a letter from a family member of the council, he has never seen the letter. The contents of which he heard from somebody.

> In *Morgan v. Odhams Press Ltd. and Another* [1971] 2 All ER 1156, the House of Lords said that "... It is now settled that the plaintiff must give sufficient particulars of the special facts on which he or his witness rely. But that in itself may not be enough ... . Then RHC O. 18 r. 19 can be used to stop the case from going to trial.

Order 78 r. 2 RHC 1980 adopted the decision in *Collins v. Jones (supra)*. In this case there is the requirement to give sufficient the particulars of the publication. By O. 78 r. 3(2) RHC 1980 the plaintiff is unable to "... give particulars stating which of the words complained he alleges are statement of facts and of the facts and matters he relies on in support of the allegation that the words are true."

In para. 4 of the amended statement of claim the plaintiff has failed "to launch a case with sufficient clarity." – *Collins v. Jones*.

D2's appeal is allowed with costs.